

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the remarks herewith, which place the application in condition for allowance or in better condition for appeal. Applicants acknowledge with appreciation the indication by the Examiner that claim 4 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-4 are pending. No new matter is added.

It is submitted that these claims are patentably distinct from the documents cited by the Examiner, and that these claims are in full compliance with the requirements of 35 U.S.C. §112. The remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the remarks are made simply for clarification and to round out the scope of protection to which Applicant is entitled.

Claims 1-3 were rejected under 35 U.S.C. §103 as allegedly being rendered obvious by Hawthorne et al. (U.S. 2,997,973) in view of McCullough Jr. et al. (U.S. 4,897,303). The rejection is traversed. None of the cited documents teach, suggest, disclose or motivate a skilled artisan to practice the instantly claimed invention.

The instant invention is directed to a flexible fluid containment vessel for the transportation and/or containment of cargo comprising a fluid or fluidisable material, said vessel comprising, *inter alia*, a means for rendering the tubular structure buoyant comprising forming the fabric having at least one thermoplastic or thermoset coating that renders the fabric buoyant. Such an invention is neither disclosed, taught, enabled nor suggested in the cited documents.

Contrary to the assertion of the Examiner, neither Hawthorne nor McCullough, either alone or in combination, teach, suggest, disclose or motivate a skilled artisan to practice the

instantly claimed invention. More specifically, the combination of the cited documents do not teach, suggest or motivate a skilled artisan to practice the claimed flexible fluid containment vessel for the transportation and/or containment of cargo comprising a fluid or fluidisable material, said vessel comprising, *inter alia*, a means for rendering the tubular structure buoyant comprising forming the fabric having at least one thermoplastic or thermoset coating that renders the fabric buoyant.

The Examiner concludes that Hawthorne provides motivation to enhance the buoyancy of the fabric so that it could be used with fluidisable cargo that does not provide sufficient buoyancy on its own. (*Office Action*, at 2-3). However the Examiner acknowledges that Hawthorne does not disclose a thermoset or thermoplastic coating that renders the fabric buoyant. (*Office Action*, at 2). In contrast, Hawthorne teaches that buoyancy of the vessel is created by the contents of the vessel. (Col. 1, lines 30-32). Thus, one of ordinary skill in the art would not look to McCullough to provide buoyancy for a vessel because Hawthorne already teaches the use the vessel's contents to provide the necessary buoyancy. In fact, in contrast to the view of the Examiner, the disclosure of Hawthorne would steer a skilled artisan away from having at least one thermoplastic or thermoset coating that renders the fabric buoyant. Thus, there would be no motivation for one skilled in the art to use the disclosure of Hawthorne from having at least one thermoplastic or thermoset coating that renders the fabric buoyant. Consequently the disclosure of Holmes would not motivate a skilled artisan to practice the instantly claimed invention.

The Examiner is respectfully reminded that the requisite expectation of success under settled U.S. case law cannot be found in Applicants' specification and that an obviousness rejection based on hindsight is impermissible.

Again, the Federal Circuit in *In re Fine* was very clear that “obvious to try” is not the standard on which an obviousness rejection should be based. And as “obvious to try” would be the only standard that would lend the instant rejection any viability, the rejections must fail as a matter of law.

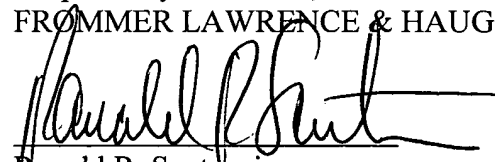
Consequently, reconsideration and withdrawal of the Section 103 rejections are warranted and respectfully requested.

CONCLUSION

Favorable reconsideration of the application, withdrawal of the rejections and objections, and prompt issuance of the Notice of Allowance are, therefore, all earnestly solicited.

Respectfully submitted,
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